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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,113	09/24/2003	Leonard R. Kilby	79123-1131	8154
38406	7590	12/06/2005	EXAMINER	
MICHAEL A. O'NEIL, P.C. 5949 SHERRY LANE, SUITE 820 DALLAS, TX 75225			TAWFIK, SAMEH	
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 12/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/670,113

Applicant(s)

KILBY ET AL.

Examiner

Sameh H. Tawfik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 63 and 64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 63 and 64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03282005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 63 and 64 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 31 and 32 of U.S. Patent No. 6,401,435.

Although the conflicting claims are not identical, they are not patentably distinct from each other because applicants present claims and limitations in the bending case are not patentably distinct from the claims disclosed in the U.S. Patent No. 6,401,435.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 63 is rejected under 35 U.S.C. 102(b) as being anticipated by Euverard et al. (4,522,292).

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Euverard discloses a method of assembling wrapped bakery products into predetermined patterns and thereafter transferring the patterns of wrapped bakery products into bakery trays for transport including the steps of providing a grouping apparatus (Fig. 1; via feed conveyor 21 and grouping gate 27) for receiving individual wrapped bakery products (Fig. 2; via group products 28; column 1, lines 9-13); arranging groups of between 1 and about 6 wrapped bakery products on the grouping apparatus (Figs. 3-6); providing a turntable (Fig. 2, via turn table 60); providing a transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable (Figs 1 and 2, via conveyor 25); and arranging a subsequent group of wrapped bakery products on the grouping apparatus (Fig. 1; via feeding conveyor 21 and grouping gate 27) during movement of a previous group of wrapped bakery products from the grouping apparatus onto the turntable under the action of the transfer apparatus, see for example (Figs. 1 and 2).

Claim 64 is rejected under 35 U.S.C. 102(b) as being anticipated by Schneider et al. (5,317,859).

Schneider discloses a method of forming wrapped bakery products into predetermined pattern thereafter transferring the patterns of wrapped bakery products into bakery trays including the steps of providing a turntable (Fig. 1, via turn table assembly 70); forming a pattern of wrapped bakery products on the turntable (Fig. 2); providing a transfer apparatus (Figs. 4A-4C); moving patterns of wrapped bakery products directly from the turntable into bakery trays under the action of the transfer apparatus (Figs. 4A-4C); and forming a subsequent pattern of wrapped bakery products on the turntable during movement of a previous pattern of wrapped

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bakery products into a bakery tray under the action of the transfer apparatus, see for example (Figs. 2 and 4A-4C).

Response to Arguments

Applicant's arguments with respect to claim 64 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments in respect to the double patterning issue and claim 63 filed on 03/02/2005 have been fully considered but they are not persuasive.

Applicants argue in pages 6 and 7 of the filed arguments that application serial No. 10/093,242, is the parent of the present application, included claims 33-64, wherein the claims were subjected to a restriction requirement. Applicant elected group I (claim 33-62), for prosecution in the parent application. The present application is a divisional application comprising claims 63 and 64 from the parent application. With respect to Patent Act, I.e., 35U.S.C. 121, prevents a parent application from being used as a reference against claims presented in a subsequently filed divisional application. The examiner agrees with applicants that the parent application 10/093,242 should not be used against claims presented in the present application. Whatever, the examiner draws applicants attention that such parent application No. 10/093,242 was not used for the Double Patenting rejection. As set forth, the examiner using U.S. Patent No. 6,401,435 of application No. 09/587,127 for rejecting the claims of the present application for the Double Patenting rejection. Note that application No. 09/587,127 is not the parent of the present application, therefore the Double Patenting rejection is proper.

Applicants further argue in page 8 that claim 63 calls for a transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable, no such device is disclosed or suggested by the '292 patent. The examiner believes that '292 discloses in Fig. 1 a grouping gate 27 to hold on and group the bakery product together, which could be considered as grouping apparatus and further feed conveyor 21 could be considered as transferring apparatus to transfer the grouped product into the turntable.

Applicant further argue that '292 patent using the same device for grouping and transferring the bakery product into the turntable. The examiner believes that by looking at Fig. 1 of '292 can consider the first portion via grouping gate 27 as a separate device from the transferring apparatus via conveyor 21.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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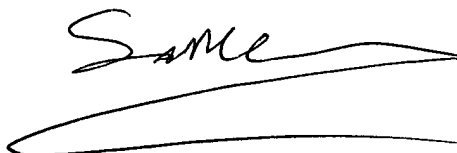
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is 571-272-4470.

The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sameh H. Tawfik
Patent Examiner
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A handwritten signature in dark ink, appearing to read 'Sameh', with a long horizontal flourish extending to the right.

ST.